Supp. to Brief for Appt.

Filed Oct. 31, 1898.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 49.

MARTIN F. MORRIS ET AL., APPELLANTS,

vs.

THE UNITED STATES.

SUPPLEMENTAL APPENDIX TO BRIEF FOR THE UNITED STATES, CONTAINING CERTAIN ACTS OF CONGRESS AND OF MARYLAND, AND DEEDS FROM MOTLEY YOUNG AND FROM HAMBURGH LOT-OWNERS TO SKALL AND GANTT.

SUPPLEMENTAL APPENDIX TO BRIEF FOR THE UNITED STATES.

Act of Congress Establishing Seat of Government.

An Act for establishing the temporary and permanent Seat of the Government of the United States.

(Approved July 16, 1790.)

Sec. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That a district of territory, not exceeding ten miles square, to be located as hereafter directed, on the river Potomac, at some place between the mouths of the Eastern Branch and Connogocheague, be, and the same is hereby accepted for the permanent seat of the government of the United States: *Provided, nevertheless*, That the operation of the laws of the state within such district shall not be affected by this acceptance, until the time fixed for the removal of the government thereto, and until Congress shall otherwise by law provide.

Sec. 2. *And be it further enacted*, That the President of the United States be authorized to appoint, and by supplying vacancies happening from refusals to act, or other causes, to keep in appointment, as long as may be necessary, three commissioners, who, or any two of whom, shall, under the direction of the President, survey, and, by proper metes and bounds, define and limit a district of territory, under the limitations above mentioned; and the district so defined, limited, and located shall be deemed the district accepted by this act for the permanent Seat of the Government of the United States.

Sec. 3. *And be it enacted*, That the said Commissioners, or any two of them, shall have power to purchase or accept such quantity of land on the eastern side of the said river, within the said District, as the President shall deem proper, for the use of the United States, and according to such plans as the President shall approve, the said Commissioners, or any two of them, shall, prior to the first Monday in De-

cember, in the year one thousand eight hundred, provide suitable buildings for the accommodation of Congress, and of the President, and for the public offices of the Government of the United States.

Sec. 4. *And be it enacted*, That, for defraying the expense of such purchases and buildings, the President of the United States be authorized and requested to accept grants of money.

Sec. 5. *And be it enacted*, That, prior to the first Monday in December next, all officers attached to the Seat of the Government of the United States shall be removed to, and until the said first Monday in December, in the year one thousand eight hundred, shall remain at the city of Philadelphia, in the State of Pennsylvania, at which place the session of Congress next ensuing the present shall be held.

Sec. 6. *And be it enacted*, That, on the said first Monday in December in the year one thousand eight hundred, the Seat of the Government of the United States shall, by virtue of this act, be transferred to the district and place aforesaid. And all offices attached to the said Seat of Government shall accordingly be removed thereto by their respective holders and shall, after the said day, cease to be exercised elsewhere; and that the necessary expense of such removal shall be defrayed out of the duties on imposts and tonnage, of which a sufficient sum is hereby appropriated.

Deed from Notley Young to Beall and Gantt.

EXHIBIT "U. S. No. 18."

[Liber "A," Folio 10, et seq.]

At the request of Thomas Beall of George and John Mackall Gantt, the following deed was recorded this 5th of January, 1792, to wit:

This Indenture, made this twenty-eighth day of June, in the year of our Lord one thousand seven hundred and ninety-

one, betw ı Notley Young of the State of Maryland, of the one part, l Thomas Beall, son of George, and John Mackall Gantt, of .ıe State of Maryland, of the other part, *Witnesseth*, that the said Notley Young for and in consideration of the sum of five shillings to him in hand paid by the said Thomas Beall and John Mackall Gauntt, before the sealing and delivery of these presents, the receipt whereof they doth hereby acknowledge, and therefore doth acquit them the said Thomas Beall and John Mackall Gaunt, their executors and administrators, and also for and in consideration of the uses and trusts hereinafter mentioned to be performed by the said Thomas Beall and John Mackall Gaunt, and the survivor of them, and the heirs of such survivor, according to the true intent and meaning thereof, hath granted, bargained, sold, aliened, released and confirmed, and by these presents doth grant, bargain, sell, alien, release and confirm unto the said Thomas Beall and John Mackall Gaunt, and the survivor of then, and the heirs of such survivor, all the lands of him, the said Notley Young, lying and being within the following limits, boundarys and lines, to wit: beginning on the east side of Rock Creek at a stone standing in the middle of the road leading from Georgetown to Bladensburgh, thence along the middle of the said road to a stone standing on the east side of the Reedy Branch of Goose Creek, thence southeasterly making an angle of sixty-one degrees and twenty minutes, with the meridian to a stone standing in the road leading from Bladensburgh to the Eastern Branch Ferry, thence south to a stone eighty poles north of the East and West line already drawn from the mouth of Goose Creek to the Eastern Branch, then east parallel to the said East and West line to the Eastern Branch, then with the waters of the Eastern Branch, Potomack River and Rock Creek to the beginning with their appurtenances except all and every lot and lots of which the said Notley Young is seized or to which he is entitled lying in Carrollsburgh or Hamburgh. *To have and to hold* the hereby bargained and

sold lands with their appurtenances to the said Thomas Beall and John Mackall Gaunt, and the survivor of them, and the heirs of such survivor forever, to and for the special trusts following, and no other, that is to say, that all the said lands hereby bargained and sold, or such part thereof as may be thought necessary or proper be laid out together with other lands within the said limits for a Federal City, with such streets, squares, parcels and lots as the President of the United States for the time being shall approve, and that the said Thomas Beall, John Mackall Gaunt, or the survivor of them, or the heirs of such survivor, shall convey to the Commissioners for the time being appointed by virtue of an Act of Congress, entitled "An Act for establishing the temporary and permanent seat of the Government of the United States, and their successors, for the use of the United States forever, all the said streets, and such of the said squares, parcels and lots as the President shall deem proper, for the use of the * * * United States, and that as to the residue of the lots into which the said lands hereby bargained and sold, shall have been laid off and divided that a fair and equal division of them shall be made, and if no other mode of division shall be agreed on by consent of the said Notley Young and the said Commissioners for the time being, then such residue of the said lots shall be divided every other lot alternate to the said Notley Young, and it shall in that event be determined by lot whether the said Notley Young shall begin with the lot of the lowest number laid out on the said land or the following number, and all the said lots which may in any manner be divided or assigned to the said Notley Young shall thereupon together with any part of the said bargained and sold land, if any, which shall not have been laid out in the said City be conveyed by the said Thomas Beall and John Mackall Gaunt, or the survivor of them, or the heirs of such survivor, to him, the said Notley Young, his heirs and assigns, and that the said other lots shall,

and may be, sold at such time or times, in such manner and on such terms and conditions as the President of the United States for the time being shall direct; and that the said Thomas Beall and John Mackall Gaunt, or the survivor of them, or the heirs of such survivor, will, on the order or direction of the President, convey all the said lots so sold and ordered to be conveyed to the respective purchasers in fee simple according to the terms and conditions of such purchases; and the produce of the sales of the said lots when sold, as aforesaid, shall in the first place be applied to the payment in money to the said Notley Young, his executors, administrators or assigns for all the part of the land hereby bargained and sold which shall have been laid off in lots, squares or parcels and appropriated as aforesaid to the use of the United States at the rate of twenty-five pounds per acre, thereof, and the said twenty-five pounds per acre being so paid or in any other manner satisfied, then the produce of the same sales or what thereof may remain as aforesaid in money or secureties of any kind shall be paid, assigned, transferred and delivered over to the President for the time being as a grant of money and to be applied for the purposes and according to the Act of Congress aforesaid, but the said conveyance to the said Notley Young, his heirs or assigns, as well as the conveyances to the purchasers shall be on and subject to such terms and conditions as shall be thought reasonable by the President for the time being for regulating the materials and manner of the buildings and improvements on the lots generally in said city or in the particular streets or parts thereof for common convenience, safety and order; provided such terms and conditions be declared before the sales of any of the said lots under the direction of the President. And in trust farther and on the agreement that [he], the said Notley Young his heirs and assigns shall and may continue his possession and occupation of the said land hereby bargained and sold, at his and

their will and pleasure until the same shall be occupied under the said appropriations for the use of the United States as aforesaid, or by purchasers, and when any lots or parcels shall be occupied under purchase or appropriations as aforesaid, then, and not till then, shall the said Notley Young relinquish his occupation thereof. And in trust also as to the trees, timber and woods on the premises that he, the said Notley Young, his heirs or assigns, may freely cut down, take and use the same as his and their property, except such of the trees and wood growing as the President or Commissioners aforesaid may judge proper and give notice, shall be left for ornament, for which the just and reasonable value shall be paid to the said Notley Young, his executors, administrators or assigns, exclusive of the said twenty-five pounds per acre, for the land, and in case the arrangements of the streets, lots and like will conveniently admit of it, he, the said Notley Noung, his heirs and assigns, shall, if he so desire it, possess and retain his buildings, mill, garden and graveyard, on the hereby bargained and sold lands, paying to the President at the rate of twelve pounds ten shillings per acre, of the lands so retained, because of such buildings, mill, garden and graveyard to be applied as aforesaid, and the same shall be thereupon conveyed to the said Notley Young, his heirs and assigns, with his lots; but if the arrangements of the streets, lots and the like will not conveniently admit of such retention and it shall become necessary to remove such buildings, mill or garden, then the said Notley Young, his executors, administrators or assigns, shall be paid the reasonable value thereof in the same manner as squares or other ground appropriated for the use of the United States are to be paid for. And because it may so happen that by the deaths or removals of the said Thomas Beall and John Mackall Gaunt, and from other causes difficulties may occur in fully perfecting the said trust by executing all the said conveyances, if no eventual provision is made, it is therefore agreed and cove-

nanted, between all the said parties, that the said Thomas Beall and John Mackall Gaunt, or either of them, or the heirs of either of them, lawfully made, and that they at any time at the request of the President of the United States for the time being, will convey all or any of the said lands hereby bargained and sold which shall not then have been conveyed in execution of the trusts aforesaid to such person or persons as he shall appoint, in fee simple, subject to the trusts then remaining to be executed, and to the end that the same may be perfected. And it is further granted and agreed by all the said parties, and each of the said parties doth for himself respectively and his heirs covenant and grant to and with the others of them that he and they shall, and will, if required by the President of the United States for the time being join in and execute any farther deed or deeds for carrying into effect the trusts, purposes and true intent of this present deed.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and affixed their seals the day and year first above written.

NOTLEY YOUNG. [SEAL.]

Signed, sealed and delivered in presence of—

RD. T. HOOE,
DANL. JENIFER, Jr.

On the back of which deed was the following endorsement, To wit: received on the day and year first within written of and from the within named Thomas Beall and John Mackall Gaunt the sum of five shillings, being the consideration money within mentioned to be by them paid to me.

NOTLEY YOUNG.

Witness:
RD. T. HOOE,
DAN. JENIFER, Jr.

On the 29th day of June, 1791, came before me, one of the judges of the General Court, the within named Notley Young and acknowledged the within and foregoing instrument of writing to be his act and deed, and on the same day and year came also before me Mary, the wife of the said Notley Young, and she being by me privately examined apart from and out of the hearing of her husband did release and relinquish all her right, title and interest of dower in the within bargained and sold land and appurtenances, and she declared that she made such release of her dower, and this her acknowledgment voluntarily and freely, without being induced thereto by fear or threats of or ill usage from her husband or through fear of his displeasure.

Before— TH. JOHNSON.

OFFICE OF RECORDER OF DEEDS,
District of Columbia, } ss:

I, Gerrit S. Loguen, Dep. Recorder of Deeds of the District of Columbia, do hereby certify that I have compared the annexed copy of Deed with the record of the original thereof, recorded in this office on the the 5th day of Jan., 1792, at M., in Liber "A," No. , one of the Land Records of the District of Columbia, on page 10, and that the same is a correct transcript therefrom, and of the whole of said record.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 29 day of April, 1887.

[SEAL.] GERRIT S. LOGUEN,
Dep. Recorder of Deeds, District of Columbia.

[Endorsed]: Recorder of Deeds, District of Columbia; Deed in Trust; Notley Young to Thomas Beall et al.; Certified Copy; Jas. M. Trotter, Recorder.

Act of Maryland Ratifying the Cession.

An Act concerning the territory of Columbia and the City of Washington.

(Passed 19th December, 1791.)

Whereas, the President of the United States, by virtue of several acts of Congress, and acts of the assemblies of Virginia and Maryland, by his proclamation, dated at Georgetown on the thirtieth day of March, seventeen hundred and ninety-one, did declare and make known that the whole of the territory of ten miles squares, for the permanent seat of government of the United States, shall be located and included within the four lines following, that is to say: Beginning at Jones' Point, being the upper point of Hunting Creek, in Virginia, and at an angle in the outset of forty-five degrees west of north, and running a direct line ten miles for the first line, then beginning again at the same Jones' Point, and running another direct line at a right angle with the first across the Potomac ten miles, for the second line, then from the terminations of the said first and second lines, running two other direct lines ten miles each, the one crossing the Eastern Branch, and the other Potomac, and meeting each other in a point; which has since been called the Territory of Columbia: And whereas, Notley Young, Daniel Carroll of Duddington, and many others, proprietors of the greater part of the land hereinafter mentioned to have been laid out in a city, came into an agreement, and have conveyed their lands in trust to Thomas Beall, son of George, and John Mackall Gantt, whereby they have subjected their lands to be laid out as a city, given up part to the United States, and subjected other parts to be sold to raise money as a donation to be employed according to the act of Congress for establishing the temporary and permanent seat of the government of the United States, under and

upon the terms and conditions contained in each of the said deeds; and many of the proprietors of lots in Carrollsburgh and Hamburgh have also come into an agreement, subjecting their lots to be laid out anew, giving up one-half of the quantity thereof to be sold, and the money thence arising to be applied as a donation as aforesaid, and they to be reinstated in one-half of the quantity of their lots in the new location, or otherwise compensated in land in a different situation within the city, by agreement between the commissioners and them, and in case of disagreement, that then a just and full compensation shall be made in money; yet some of the proprietors of lots in Carrollsburgh and Hamburgh, as well as some of the proprietors of other lands, have not, from imbecility and other causes, come into any agreement concerning their lands within the limits hereinafter mentioned, but a very great proportion of the landholders having agreed on the same terms, the President of the United States directed a city to be laid out, comprehending all the lands beginning on the east side of Rock Creek, at a stone standing in the middle of the road leading from Georgetown to Bladensburgh, thence along the middle of the said road, to a stone standing on the east side of the Reedy Branch of Goose Creek, thence southeasterly making an angle of sixty-one degrees and twenty minutes with the meridian, to a stone standing in the road leading from Bladensburgh to the Eastern Branch Ferry, thence south to a stone eighty poles north of the east and west line already drawn from the mouth of Goose Creek to the Eastern Branch, then east, parallel to the said east and west line, to the Eastern Branch, then with the waters of the Eastern Branch, Potomac River and Rock Creek to the beginning, which has since been called the City of Washington; And whereas, it appears to this General Assembly highly just and expedient that all the lands within the said city should contribute, in due proportion, in the means which have already very greatly

enhanced the value of the whole; that an incontrovertible title ought to be made to the purchasers, under public sanction; that allowing foreigners to hold land within the said territory will greatly contribute to the improvement and population thereof; and that many temporary provisions will be necessary till Congress exercise the jurisdiction and government over the said territory: And whereas, in the cession of this state, heretofore made, of territory for the government of the United States, the lines of such cession could not be particularly designated; and it being expedient and proper that the same should be recognized in the acts of this State—

2. *Be it enacted by the General Assembly of Maryland*, That all that part of the said territory, called Columbia, which lies within the limits of this state, shall be and the same is hereby acknowledged to be forever ceded and relinquished to the congress and government of the United States, in full and absolute right and exclusive jurisdiction, as well of soil as of persons residing, or to reside, therein, pursuant to the tenor and effect of the eighth section of the first article of the constitution of government of the United States; Provided, that nothing herein contained shall be so construed to vest in the United States any right of property in the soil, as to effect the rights of individuals therein, otherwise than the same shall or may be transferred by such individuals to the United States. And provided also, That the jurisdiction of the laws of this state, over the persons and property of individuals residing within the limits of the cession aforesaid, shall not cease or determine until Congress shall, by law, provide for the government thereof under their jurisdiction, in manner provided by the article of the constitution before recited.

3. *And be it enacted*, That all the lands belonging to minors, persons absent out of the State, married women, or persons *non compos mentis*, or lands the property of this State, within the limits of Carrollsburgh and Hamburgh,

shall be and are hereby subjected to the terms and conditions hereinbefore recited, as to the lots where the proprietors thereof have agreed concerning the same; and all the other lands, belonging as aforesaid, within the limits of the said city of Washington, shall be, and are hereby subjected to the same terms and conditions as the said Notley Young, Daniel Carroll, of Duddington, and others, have, by their said agreements and deeds, subjected their lands to, and where no conveyances have been made, the legal estate and trust are hereby invested in the said Thomas Beall, son of George, and John Mackall Gantt, in the same manner as if each proprietor had been competent to make, and had made, a legal conveyance of his or her land, according to the form of those already mentioned, with proper acknowledgements of the execution thereof, and where necessary, of release of dower, and in every case where the proprietor is an infant, a married woman, insane, absent out of the state, or shall not attend on three months' advertisement of notice in the Maryland Journal and Baltimore Advertiser, the Maryland Herald, and in the Georgetown and Alexandria papers, so that allotment cannot take place by agreement, the commissioners aforesaid, or any two of them, may allot and assign the portion or share of such proprietors as near the old situation as may be, in Carrollsburgh and Hamburgh, and to the full value of what the party might claim under the terms before recited; and, as to the other lands within the said city, the commissioners aforesaid, or any two of them, shall make such allotment and assignment, within the lands belonging to the same persons, in alternate lots, determining by lot or ballot, whether the party shall begin with the lowest number: *Provided*, That in the cases of coverture and infancy, if the husband, guardian, or next friend, will agree with the commissioners, or any two of them, then an effectual division may be made by consent; and in case of contrary claims, if the claimants will not jointly agree, the commissioners may proceed as if

the proprietor was absent; and all persons to whom allotments and assignments of lands shall be made by the commissioners, or any two of them, on consent and agreement, or pursuant to this act without consent, shall hold the same in their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations conditions and incumbrances, as their former estate and interest, and in lieu of their former quantity, and subject in every respect to all such limitations, conditions and incumbrances, as their former estates and interests were subject to, and as if the same had been actually reconveyed pursuant to the said deed in trust.

4. *And be it enacted*, That where the proprietor or proprietors, possessor or possessors, of any lands within the limits of the city of Washington, or within the limits of Carrollsburgh or Hamburgh, who have not already, or who shall not, within three months after the passage of this Act execute deeds in trust to the aforesaid Thomas Beall and John M. Gantt, of all their lands within the limits of the said city of Washington, and on the terms and conditions mentioned in the deeds already executed by Notley Young, and others, and execute deeds in trust to the said Thomas Beall and John M. Gantt, of all their lots in the towns of Carrollsburg and Hamburgh, on the same terms and conditions contained in the deeds already executed by the greater part of the proprietors of lots in the said towns, the said commissioners, or any two of them, shall and may, at any time or times thereafter, issue a process, directed to the Sheriff of Prince George's County, commanding him, in the name of the State, to summon five good substantial freeholders, who are not of kin to any proprietor or proprietors of the lands aforesaid, and who are not proprietors themselves, to meet on a certain day, and at a certain place, within the limits of the said city, to inquire of the value of the estate of such proprietor or proprietors, possessor or possessors, on which day and place the said sheriff shall

attend, with the freeholders by him summoned; which freeholders shall take the following oath or affirmation, on the land to be by them valued, to wit: "I, A. B. do solemnly swear (or affirm) that I will, to the best of my judgment, value the lands of C. D. now to be valued, so as to do equal right and justice to the said C. D. and to the public, taking into consideration all circumstances," and shall then proceed to value the said lands; and such valuation, under their hands, and seals, and under the hand and seal of the said sheriff, shall be annexed to the said process, and returned by the sheriff to the clerk appointed by virtue of this act, who shall make record of the same, and the said lands shall, on the payment of such valuation, be and is hereby vested in the said commissioners in trust to be disposed of by them, or otherwise employed to the use of the said city of Washington; and the sheriff aforesaid, and freeholders aforesaid, shall be allowed the same fees for their trouble as are allowed to a sheriff and juryman in executing a writ of inquiry; and in all cases where the proprietor or possessor is tenant in right of dower, or by the courtesy, the freeholders aforesaid shall ascertain the annual value of the lands, and the gross value of such estate therein, and upon paying such gross value, or securing to the possessor the payment of the annual valuation, at the option of the proprietor or possessor, the commissioners shall be, and are hereby vested with the whole estate of such tenant, in manner, and for the uses and purposes aforesaid.

5. *And be it enacted*, That all the squares, lots, pieces and parcels of land within the said city, which have been or shall be appropriated for the use of the United States, and also the streets, shall remain and be for the use of the United States; and all the lots and parcels, which have been or shall be sold to raise money as a donation as aforesaid, shall remain and be to the purchasers, according to the terms and conditions of their respective purchase; and purchases and leases from private persons claiming to be pro-

prietors, and having, or those under whom they claim having, been in the possession of the lands purchased or leased, in their own right, five whole years next before the passing of this act, shall be good and effectual for the estate, and on the terms and conditions of such purchases and leases respectively, without impeachment, and against any contrary title now existing; but if any person hath made a conveyance, or shall make a conveyance or lease, of any lands within the limits of the said city, not having right and title to do so, the person who might be entitled to recover the land under a contrary title now existing, may, either by way of ejectment against the tenant, or in an action for money had and received for his use against the bargainer or lessor, his heirs executors, administrators, or devisees, as the case may require, recover all money received by him for the squares, pieces, or parcels, appropriated for the use of the United States, as well as for lots or parcels sold, and rents received, by the person not having title as aforesaid, with interest from the time of the receipt; and, in such recovery in ejectment, where the land is in lease, the tenant shall thereafter hold under, and pay the rent reserved to, the person making title to and recovering the land; but the possession *bona fide* acquired, in none of the said cases shall be changed.

6. *And be it enacted*, That any foreigner may, by deed or will hereafter to be made, take and hold lands within that part of the said territory which lies within this state, in the same manner as if he was a citizen of this state, and the same lands may be conveyed by him, and transmitted to, and be inherited by, his heirs or relations, as if he and they were citizens of this state: Provided, That no foreigner shall, in virtue thereof, be entitled to any further or other privilege of a citizen.

7. *And be it enacted*, That the said commissioners, or any two of them, may appoint a clerk for recording deeds

of lands within the said territory, who shall provide a proper book for the purpose, and therein record, in a strong, legible hand, all deeds, duly acknowledged, of lands in the said territory, delivered to him to be recorded, and in the same book make due entries of all divisions and allotments of lands and lots made by the commissioners in pursuance of this act, and certificates granted by them of sales, and the purchase money having been paid, with a proper alphabet in the same book of the deeds and entries aforesaid, and the same book shall carefully preserve, and deliver over to the commissioners aforesaid, or their successors, or such person or persons as Congress shall hereafter appoint; which clerk shall continue such during good behaviour, and shall be removable only on conviction of misbehaviour in a court of law; but before he acts as such, he shall take an oath, or affirmation, well and truly to execute his office; and he shall be entitled to the same fees as are or may be allowed to the clerks of the county courts for searches, copying, and recording.

8. *And be it enacted*, That acknowledgments of deeds made before a person in the manner and certified as the laws of this state direct, or made before, and certified by, either of the commissioners, shall be effectual; and that no deed hereafter to be made, of or for lands within that part of the said territory which lies within this state, shall operate as a legal conveyance, nor shall any lease for more than seven years be effectual, unless the deed shall have been acknowledged as aforesaid and delivered to the said clerk to be recorded within six calendar months from the date thereof.

9. *And be it enacted*, That the commissioners aforesaid, or some two of them, shall direct an entry to be made in the said record book of every allotment and assignment to the respective proprietors in pursuance of this act.

10. And, for the encouragement of master builders to

undertake the building and finishing houses within the said city, by securing to them a just and effectual remedy for their advances and earnings, *be it enacted*, That for all sums due and owing on written contracts, for the building any house in the said city, or the brick work, or carpenters or joiners work thereon, the undertaker, or workmen, employed by the person for whose use the house shall be built, shall have a lien on the house and the ground on which the same is erected, as well as for the materials found by him: provided the said written contract shall have been acknowledged before one of the commissioners, a justice of the peace, or an alderman of the corporation of Georgetown, and recorded in the office of the clerk for recording deeds herein created, within six calendar months from the time of acknowledgement as aforesaid; and if within two years after the last of the work is done, he proceeds in equity, he shall have remedy as upon a mortgage, or if he proceeds at law within the same time he may have execution against the house and land, in whose hands soever the same may be; but this remedy shall be considered as additional only; nor shall, as to land, take place of any legal incumbrance made prior to the commencement of such claim.

11. *And be it enacted*, That the treasurer of the western shore be empowered and required to pay seventy-two thousand dollars agreed to be advanced to the President by resolution of the last session of assembly, in sums as the same may come to his hands on the appointed funds, without waiting for the day appointed for the payment thereof.

12. *And be it enacted*, That the commissioners aforesaid for the time being, or any two of them, shall from time to time, until Congress shall exercise the jurisdiction and government within the said territory, have power to license the building of wharfs in the waters of Potomac and the Eastern Branch, adjoining the said city, of the mate-

rials, in the manner and of the extent, they may judge durable, convenient, and agreeing with general order; but no license shall be granted to one to build a wharf before the land of another, nor shall any wharf be built in the said waters without license as aforesaid; and if any wharf shall be built without such license or different therefrom, the same is hereby declared a common nuisance; they may also, from time to time, make regulations for the discharge and laying of ballast from ships or vessels lying in Potomac River, above the lower line of the said territory and Georgetown, and from ships and vessels lying in the Eastern Branch; they may also, from time to time, make regulations for landing and laying materials for building the said city, for disposing and laying earth which may be dug out of the wells, cellars, and foundations, and for ascertaining the thickness of the walls of houses, and to enforce the observance of all such regulations, by appointing penalties for the breach of any one of them, not exceeding ten pounds current money, which may be recovered in the name of the said commissioners by warrant, before a justice of the peace, as in case of small debts, and disposed of as a donation for the purpose of the said act of congress; and the said commissioners, or any two of them, may grant licenses for retailing distilled spirits within the limits of the said city, and suspend or declare the same void: and if any person shall retail or sell any distilled spirits, mixed or unmixed, in less quantity than ten gallons to the same person, or at the same time actually delivered, he or she shall forfeit for every such sale three pounds, to be recovered and applied as aforesaid.

13. *And be it enacted*, That an act of assembly of this state, to condemn lands, if necessary, for the public buildings of the United States, be and is hereby repealed.

Deed from Hamburgh Lot Owners to Beall and Gantt.

EXHIBIT "U. S. No. 15."

[Liber "A," folio 227, et seq.]

At the request of Thomas Beall and John M. Gantt, this deed was recorded 9th April, 1793.

This Indenture made this ninth day of April, in the year of our Lord one thousand seven hundred and ninety-three, between Thomas Johns, James M. Lingan, William Deakins, jun., Uriah Forrest and Benjamin Stoddert, of the State of Maryland, of the one part, and Thomas Beall (son of George) and John Mackall Gantt, of the State of Maryland, of the other part, *Witnesseth:* That the said Thomas Johns, James M. Lingan, William Deakins, jun., Uriah Forrest, and Benjamin Stoddert, for and in consideration of the sum of five shillings to each of them in hand paid by the said Thomas Beall (son of George) and John Mackall Gantt, at or before the sealing and delivery of these presents, the receipt whereof they do hereby respectively acknowledge, and thereof do and each of them doth acquit th said Thomas Beall (son of George) and John Mackall Gantt, their executors and administrators, and also for and in consideration of the uses and trusts hereinafter mentioned, to be performed by the said Thomas Beall (son of George) and John Mackall Gantt, and the survivor of them, and the heirs of such survivor, according to the true intent and meaning thereof, have, and each of them hath, granted, bargained, sold, aliened, released and confirmed, and by these presents do and each of them doth grant, bargain, sell, alien, release, and confirm unto the said Thomas Beall (son of George) and John Mackall Gantt, and the survivors of them, and the heirs of such survivor, all and each and every the lots, pieces and parcels of ground of them, the said Thomas Johns, James M. Lingan, William Deakins, jun., Uriah Forrest, and Benjamin Stoddert, and every of

them, situate and being in Carrollsburgh, and also in Hamburgh, in Prince George's County, with their appurtenances; *To have and to hold* the hereby bargained and sold lots, pieces and parcels of ground, with their appurtenances, to the said Thomas Beall (son of George) and John Mackall Gantt, and the survivor of them, and the heirs of such survivor forever, to and for the special trusts following, and no other, that is to say, that all the said lots, pieces and parcels of ground hereby bargained and sold to be laid out, together with the other lands designated for that purpose, for a Federal City, with such streets, squares, parcels as the President of the United States for the time being hath approved, or shall approve; and that the said Thomas Beall (son of George) and John Mackall Gantt, or the survivor of them, or the heirs of such survivor, shall convey to the Commissioners for the time being, appointed by virtue of the Act of Congress entitled "An Act for establishing the temporary and permanent seat of the Government of the United States," and their successors, for the use of the United States forever, all the said streets, and such of the said squares, parcels and lots as the President shall deem proper, for the use of the United States; and that one-half the quantity of the said lots, pieces and parcels hereby bargained and sold shall be assigned and conveyed as near the old situation as may be to them, the said Thomas Johns, James M. Lingan, William Deakins, jun., Uriah Forrest, and Benjamin Stoddert, respectively, in fee simple, so that each respective former proprietor shall have made up to him one-half of his former quantity and in as good a situation; but if from appropriations for the use of the United States one-half the quantity cannot be assigned to any former proprietor in like situation, then shall there be satisfaction made him in ground within the Federal City by consent and agreement between him and the Commissioners; but if they should disagree, then shall the same proprietor receive a just and full compensation in money in lieu of land; and that such parts of the said lots, pieces and parcels hereby bargained

and sold which shall remain clear of appropriations for the use of the United States, and which shall remain after satisfaction in land to the now proprietors, shall and may be sold at such time or times, in such manner and on such terms and conditions as the President of the United States for the time being shall direct; and that the said Thomas Beall (son of George) and John Mackall Gantt, or the survivor of them, or the heirs of such survivor, will, on the order or directions of the President, convey the same to the respective purchasers in fee simple, according to such direction and the terms and conditions of such purchases; and the produce of the sales shall, as far as necessary be, in the first place, applied to make good the payment in money (where compensation is to be made in money) and what thereof may remain in money or securities of any kind shall be paid, assigned, transferred and delivered over to the President for the time being as a grant of money, and to be applied for the purposes and according to the Act of Congress aforesaid; but the said conveyances to the purchasers shall be on and subject to such terms and conditions as shall be thought reasonable by the President for the time being, for regulating the materials and manner of the buildings and improvements on the lots generally in the said city, or in particular streets or parts thereof, for common convenience, safety and order; provided such terms and conditions be declared before the sale of any of the said lots under the direction of the President; and because it may so happen that by the deaths or removals of the said Thomas Beall (son of George) and John Mackall Gantt, or from other causes, difficulties may occur in fully perfecting the said trusts by executing all the said conveyances, if no eventual provisions is made, it is therefore agreed and covenanted between all the said parties that the said Thomas Beall (son of George) and John Mackall Gantt, or either of them, or the heirs of either of them, lawfully may, and that they at any time at the request of the President of the United States for the time being, will convey all or any part of the said lands hereby

bargained and sold which shall not then have been conveyed in execution of the trusts aforesaid, to such person or persons as he shall appoint, in fee simple, subject to the trusts then remaining to be executed, and to the end that the same may be perfected; and it is farther granted and agreed between all the said parties, and each of the said parties doth for himself respectively, and his heirs, covenant and grant to and with the other of them that he and they shall and will, if required by the President of the United States for the time being, join in and execute any farther deed or deeds for carrying into effect the trusts, purposes, and true intent of the present deed.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and affixed their seals the day and year first above written.

THOMAS JOHNS,	[SEAL.]
JAMES M. LINGAN,	[SEAL.]
WILLIAM DEAKIN, JUN.,	[SEAL.]
URIAH FORREST,	[SEAL.]
BEN. STODDERT.	[SEAL.]

Signed, sealed, and delivered in the presence of—

THO. COOK,
DANIEL CARROLL.

Received by each of us, this ninth day of April, 1793, of the within named Thomas Beall (son of George) and John Mackall Gantt, the sum of five shillings, current money.

Witness our hands:

THOMAS JOHNS,
JAS. M. LINGAN,
WILL DEAKINS, JUN.,
BEN. STODDERT,
URIAH FORREST.

Test:
THO. COOK.

On the back of which deed was indorst thus: To wit: District of Columbia. On the ninth day of April, 1793, came

before me, one of the Commissioners of the Federal Buildings, Thomas Johns, William Deakins, Jun., James M. Lingan, Uriah Forrest, and Benjamin Stoddert, and severally acknowledged, each for himself, the within instrument of writing to be his act and deed; and at the same time came Jane, the wife of said William Deakins; Janet, the wife of said James M. Lingan; Rebecca, the wife of said Uriah Forrest, and Rebecca, the wife of said Benjamin Stoddert, and being by me privately examined apart from and out of the hearing of their respective husbands, each and every of them relinquished all right and title of dower to the within bargained lands and premises, and each of them declared that she made such release of dower and this acknowledgment voluntarily and freely, without being induced thereto by fear or threats of or ill usage from her husband, or fear of his displeasure.

Acknowledged before—

DAN'L CARROLL.

OFFICE OF RECORDER OF DEEDS, *District of Columbia.* } *ss.*

I, Gerrit S. Loguen, Dep. Recorder of Deeds for the District of Columbia, do hereby certify that I have compared the annexed copy of Deed with the record of the original thereof, recorded in this office on the 9th day of April, 1793, at M., in Liber "A," No. , one of the Land Records of the District of Columbia, on page 227, and that the same is a correct transcript therefrom, and of the whole of said record.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 29 day of April, 1887.

[SEAL.] GERRIT S. LOGUEN,
Dep. Recorder of Deeds, District of Columbia.

[Endorsed]: Recorder of Deeds, District of Columbia. Deed in Trust. Thomas Johns and Forrest, Lingan and Stoddert to Thomas Beall et al. Certified copy. Jas. M. Trotter, Recorder.

Act of Maryland as to Certificates to Purchasers, Allotments in Carollsburgh and Hamburgh, and Recordation of Deeds.

A further supplement to the Act concerning the Territory of Columbia and the city of Washington.

(Passed 28th December 1793).

Be it enacted by the General *Assembly of Maryland*, That the certificates granted, or which may be granted, by the said commissioners, or any two of them, to purchasers of lots in the said city, with acknowledgment of the payment of the whole purchase money, and interest, if any shall have arisen thereon, and recorded agreeably to the directions of the act concerning the territory of Columbia and the city of Washington, shall be sufficient and effectual, to vest the legal estate in the purchasers, their heirs and assigns, according to the import of such certificates, without any deed or formal conveyance.

2. *And be it enacted*, That on sales of lots in the said city by the said commissioners, or any two of them, under terms or conditions of payment being made therefor at any day or days after such contract entered into, if any sum of the purchase money or interest shall not be paid for the space of thirty days after the same ought to be paid, the commissioners, or any two of them, may sell the same lots at public vendue, in the city of Washington, at any time after sixty days notice of such sale, in some of the public newspapers of Georgetown and Baltimore-town, and retain in their hands sufficient of the money produced by such new sale to satisfy all principal and interest due on the first contract, together with the expenses of advertisements and sale, and the original purchaser, or his assigns, shall be entitled to receive from the said commissioners, at their treasury, on demand, the balance of the money which may have been actually received by them, or under their order, on the said second sale; and all lots, so sold, shall be freed and acquitted

of all claim, legal and equitable, of the first purchaser, his heirs and assigns.

3. *And be it enacted*, That the commissioners aforesaid, or any two of them, may appoint a certain day for the allotment and assignment of one-half of the quantity of each lot of ground in Carrollsburgh and Hamburg, not before that time divided or assigned, pursuant to the said act concerning the territory of Columbia and the city of Washington, and on notice thereof in the Annapolis, some one of the Baltimore, the Eastern and Georgetown newspapers, for at least three weeks, the same commissioners may proceed to the allotment and assignment of ground within the said city, on the day appointed for that purpose, and therein proceed, at convenient times, till the whole be finished, as if the proprietors of such lots actually resided out of the State; provided, that if the proprietor of any such lot shall object, in person, or by writing delivered to the commissioners, against their so proceeding as to his lot, before they shall have made an assignment of ground for the same, then they shall forbear as to such lot, and may proceed according to the before mentioned act.

4. *And be it enacted*, That the said commissioners may make a seal of office of the clerk for recording deeds within the District of Columbia, which shall be kept by him; and that the like fees shall be paid for, and the like credit shall be given to, certificates under that seal, as to the like acts under the seal of a county court, and the said clerk shall be entitled to demand, and receive, his fees, when the services enjoined him by this act, and the act to which this is a further supplement, shall be performed.

No. 49
Sup. Ct. Br. of Taggart
Filed Nov. 15, 1898.

OFFICE SUPREME COURT U. S.
FILED
NOV 15 1898
JAMES H. MCKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 49

MARTIN F. MORRIS ET AL.

vs.

THE UNITED STATES.

Supplemental Brief for United States.

HUGH T. TAGGART,
Of Counsel for the United States.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 49.

MARTIN F. MORRIS ET AL.

vs.

THE UNITED STATES.

Supplemental Brief for United States.

The Deeds in Trust Rendered a Plan of the Proposed City Necessary, and a Water Street was and is Part of the one Adopted by the President.

Mr. Justice Story, in delivering the opinion of this court, in the case of Van Ness, 4 Peters, (279), said, in reference to the deeds in trust executed by Notley Young and the other proprietors, that—

> "the grants were made for the foundation of a Federal city; and the public faith was necessarily pledged, when the grants were accepted, to found such a city."

The partitions of land to be made between the grantors and the public under said deeds in trust required an arrangement of streets and squares upon the ground according to some design previously fixed upon and determined by the President; without such a design indicated on a plan it would have been impossible to carry into effect the provisions of those instruments.

The deeds and the plan, taken together, would furnish a complete illustration of the space dedicated to the purposes of the city, and of the principles to govern in its establishment; they would not only provide a rule and a guide for the proprietors and the public officers in carrying the trusts into effect, but would also be an assurance to the public in general that the city would be established, and that it would develop and mature upon the ground in accordance with the design of such plan; that the city would, in fact, be marked upon the earth in a manner which would conform to the greatest practicable extent in matter of detail to the representation upon paper.

A plan of the city being necessary, and the duty of formulating and promulgating it having been cast upon the President, he performed that duty; as to the manner of its performance, and the result thereof, the public records are clear and certain; they leave nothing to speculation and conjecture as to the views entertained and the position taken by the President in regard to the matter.

Upon pages 120 to 150, 303 to 305, and 313 to 316, of the main brief, some account of the various plans of the city is given, which shows that, while the Dermott Plan of 1797 and the King Plan of 1803 had their respective offices in connection with the affairs of the city, nevertheless, the Ellicott Plan of 1792 never lost its distinctive character as *the* plan of the city.

This plan was prepared by Mr. Ellicott, and placed in the hands of the engravers by President Washington's direction; it was the plan Mr. Jefferson, Secretary of State, informed the Commissioners on April 20, 1792 (Rec., Vol 7, p. 2213), that the President declined to make any alterations upon after it was placed in the hands of the engravers, stating that—

> "the considerations which weigh with him are the expediency of fixing the public opinion on the thing as stable and unalterable;"

it was the plan to which the Commissioners referred when they said in their letter to the President of January 2, 1797 (Ib., p. 2238), "it is by no means our wish that any alterations should be made in the published plan of the city," and the one to which they referred when they said in their letter to Davidson of February 2, 1797 (Ib. p. 2239):

> "We shall by next post forward to the President of the United States an instrument of writing for his execution, if it meets his approbation, by which the public appropriations will be finally determined. . . . The *Engraved Plan* has been the general rule in our transactions heretofore, *agreeably to which* we shall form the instrument intended for the President's signature;"

it was the plan referred to by the President in his letter to the Commissioners of February 20, 1797 (Ib. p. 2241), in which he speaks of certain alterations having been made in it before he had directed that it be engraved, "intending that work and the promulgation thereof were to give it the final and regulating stamp;" it was the plan to which the Commissioners referred in their letter to the President of February 27, 1797, when they said (Ib. p. 2242):

> "*That plan required the doing of many acts to carry it into effect, such as the laying out and bounding a water street on the waters which surround the city and laying out squares where vacant spaces unappropriated were left in several parts of the city;*"

it was the plan to which General Washington referred in his letter to Commissioner Thornton of June 1, 1799 (Rec., Vol. 6, p. 339), two years and more after the expiration of his second term of office as President, in which he says:

> "I have no hesitation in declaring (unless I have entirely forgotten all recollection of the fact) that *it has always been my invariable opinion, and remains still to be so, that no departure from the Engraved Plan of the city ought to be allowed*, unless imperious necessity should require it, or some great public good is to be promoted thereby."

These extracts amply justify the statement made by Attorney General Brackenridge in his opinion of April 5, 1806 (Rec., Vol. 7, p. 2273), that the Engraved Plan had been—

> "declared by his [the President's] successive acts to be the Plan of the city from which he would not depart in any instance where it could be avoided."

These declarations of the President and of the Commissioners conclusively dispose of the pretension that the President, in signing on March 2, 1797, the "instrument" calling upon the trustees to convey the appropriations described, and also "the streets delineated on the annexed plan," intended any suppression of the "Engraved Plan," or the "Water street" delineated upon it, or that the Commissioners understood the President's act to have any such effect.

The Commissioners, under date of February 3, 1797 (Rec., Vol. 7, p. 2240), wrote to the President enclosing the "instrument;" the Dermot Plan, which it is said to have been the intention to attach to the instrument, was then in existence; yet the Commissioners, on the 27th of the same month, in the letter above referred to, say that the Engraved Plan—

> "*required* the doing of many acts *to carry it into effect*, such as the *laying out and bounding a water street* on the waters which surround the city and laying out squares where vacant spaces unappropriated were left in several parts of the city."

The records of the Commissioners show that long prior to the appearance of the Dermott Plan of 1797, much had been done by them in the way of "laying out squares where vacant spaces unappropriated were left in several parts of the city," and in the way of "laying out and bounding a water street on the waters which surround the city," in accordance with the design of the plan of the city.

Referring to the deviations from the Engraved Plan caused by the laying out of squares not shown upon it, etc., the Commissioners in their letter of March 23, 1802, to Mr. Dennis, chairman of a committee of Congress, say in reviewing the work of laying out the city (Rec., Vol. 4, p. 1607) that the Engraved Plan appeared in October of 1792, and that "it has *since been pursued in all the operations in the city*, under the direction of the Commissioners, as far as it was practicable;" and referring to the Memorial of some of the City Proprietors to the President in 1798, complaining that innovations "of the most serious and alarming kind had been made in the Plan of the City," and seeking to persuade him—

> "that it was necessary to cause a complete plan of the city, including a Water street, to be made and established, so that there could be no departure therefrom,"

they say (Ib., p. 1610) that when the memorial was referred by the President to the Board, the Commissioners, in reply to the charge that—

> "innovations of the most serious and alarming kind had been made in the Plan of the City," etc., they *"deemed it unnecessary to do more than explicitly deny the whole."*

The right of the public authorities to lay out a water street on the ground, in accordance with that design, does not seem to have been ever denied; with them it was a question, not *of right, but of expediency.* So thought Attorney General Lee when, in 1799, he advised the Commissioners that it was more important for them to use the funds then at their disposal "in building houses" than "in reclaiming land from the water," which latter step would be necessary whenever it was determined to give the street the existence in fact which it had in law as one of the streets upon the plan of the city.

Nothing short of an act of Congress, or, at least the

combined act of all parties in interest, under the deeds in trust, and of the numerous persons who had acquired interests through purchases of lots from the Commissioners and from the original proprietors during the five years which elapsed between the promulgation of the Engraved Plan in 1792, and the appearance of the Dermott Plan in 1797, could have accomplished the suppression in that year of the subdivision indicated on the Engraved Plan or destroyed the public right to the street along the river shown on that plan. No act of Congress, or of the President, or of the Commissioners, can be found which ever specifically and in terms abandoned, or attempted the abandonment, of the public right to that street.

The Commissioners' records show that after the appearance of the Dermott Plan the subject of such a street engaged their attention, as it had frequently done before its appearance.

The series of plans which accompanied the report made to them by N. King, one of their surveyors, on March 8, 1797 (Rec., Vol. 4, p. 1602), have laid down upon them a water street along the whole of the rivers Potomac and Eastern Branch, as the street was then supposed to exist, eighty feet wide; and said plans show the changes in the dimensions of the squares as then laid out, which would be rendered necessary by giving the street what Mr. King thought would be a more eligible course; and the Commissioners' minutes of May 4, 1802 (Rec., Vol. 4, p. 1616), contain the entry:

> "Report received from Robert King with an altered map of the city in conformity to the directions of the board, and according to the large plans of Water street."

Messrs. Latrobe and King, City Surveyors, state in a letter to the Superintendent of the City dated January 3, 1816, (Rec., Vol. 4, p. 1617–18) that the records "suffered exceed-

ingly" through their removal on the invasion of the British, and this accounts doubtless for the fact that neither Mr. King's report nor the map referred to in it can now be found among the Commissioners' records; but the mere entry sufficiently illustrates that they did not consider themselves precluded by the Dermott Plan from dealing with the subject of such a street and taking such steps and proceedings as might give it an actual existence on the ground.

Although the existence of the street did not depend upon its recognition by Notley Young, nevertheless the Record abounds with instances of acts by him which, as between him and the United States, would have established its existence, if there had been no deeds in trust and the planning of the city had been his private enterprise, and he had adopted the same plan and made sales according to it; he and those holding in privity with him are with greater reason bound, under the deeds of trust and the plan adopted by the President, to its recognition as a street of the city; and if it be such a street the fee simple is in the United States; obviously as a lot owner Mr. Young was entitled to no greater rights than other lot owners similarly situated.

Mr. Young as early as January 30, 1793 (Rec., Vol. 6, p. 274), and after the appearance of the Engraved Plan, complained of the large quantities of his land which had been included in the ground reserved by the United States at the point of junction of the Potomac River and Eastern Branch, and in the triangle containing about twenty-three acres "for the erection of a marine pillar," and he requested that the spaces so taken be diminished; the effect of which would be to cause new squares to be laid out and divided with him under the terms of the deeds of trust; the lands referred to by Mr. Young as thus taken by the public are shown on the Engraved Plan. He states that upon a similar application previously made he had been informed by the President that he (the President)—

> "was sorry he could not gratify me, that *no alterations could be made in the plan.* If I was indulged

> others would have reason to complain. However, since that time, it has been found convenient to deviate from this resolution. The ground for a fort at Mr. Peter's point has been considerably diminished, and many lots are there laid out on the ground which, by the plan, was designed for the fort. Upon David Burns' land, or near the fort, the former *open spaces* are now much contracted, and lots are laid out on them for sale and *for the benefit of the proprietor.* On the hill where the capitol is to stand the same has been done."

An entry in the Commissioners' minutes of April 3, 1793, (Rec. Vol. 7, p. 2222) states that in conversations between the Commissioners and the President—

> "on the subject of Mr. Young's letter respecting the great quantities of his land appearing by the plan to be reserved for the public,'"

the President had—

> "ordered squares to be laid out on that part where it is said a marine pillar was to have been erected, and that such part only of the land on the point as may answer well the designed purposes of the appropriation there, should continue under the appropriation,"

and the Commissioners, to carry into effect the President's intention, therefore direct—

> "that a plat of that appropriation be made separate on a large scale, and squares laid down on the plat *in continuation of the general plan* to one-half of its quantity," etc.

The concessions above mentioned, and similar ones to others of the original proprietors, resulted in the creation of upwards of one hundred and thirty squares located in various parts of the city and where only "vacant spaces" appeared in the Engraved Plan.

These squares were designated with reference to their situation, north, south, east, or west, of one of the numbered squares on the Engraved Plan. Such squares were divided equally between the public and the original proprietor of the land upon which they were laid out, in accordance with the provisions of the deeds in trust.

In Robert Peter's land a square designated as Square south of Square 12 was thus created and divided with Mr. Peter; by the plat of this square, which does not appear on the Engraved Plan, it is bounded on "the southwest by Water Street 360 feet 6 inches," by which must have been meant the street along the river shown on the Engraved Plan. The changes in the location of some of the squares in Mr. Peter's land near the "Fort and Barracks," rendered necessary by the concessions made to Mr. Peter, have been considered in that portion of the main brief which is devoted to the claim made by some of his heirs.

The concessions made to Mr. Young involved the creation of many new squares in his land and their division with him under the terms of his deed in trust; among the squares so created, and which were laid out with a boundary on "Water street," are the squares designated as square southeast (or south) of Square 267, square south of Square 415, square west of Square 471, square south of Square 506 and square south of square south of Square 506.

There were many others not bounded by Water street; among which may be mentioned, south of 439, east of 546, east of 547, east of 548, south of 549, east of 549, west of 604, west of 606, east of 596, north of west of 604, etc.

These additions to the plan resulted in the dropping of Square 301 from it and in changes in the outlines of the squares along Water street shown on the Engraved Plan, a matter in regard to which Mr. Young could not, under the the circumstances, well complain.

Some of the new squares thus created were given a boundary on Water street, and the old squares indicated on the

Engraved Plan also have a boundary on Water street, both by the plan and by the returns of survey. What street was meant and intended by the designation "Water street" as the boundaries of such squares, if it is not the Water street shown on the Engraved Plan?

The Commissioners, on June 22, 1794, as shown by their minutes (Main Brief, p. 297), rejected certain surveys in Mr. Young's land which gave the Potomac as one of their boundaries, and adopted the returns which gave the squares in his land a boundary on "Water Street, according to the design of the *Plan of the city.*"

Thomas Freeman, the surveyor of the city, on July 12, 1794, informs the Commissioners that "Water Street on Potomak River is adjusted and bounded" (Rec. Vol. 4, p. 1595).

On October 18, 1794, a division between Mr. Young and the Commissioners took place, *which is signed by all parties*, of a great number of squares which had been laid out in his land, in which Squares 233, S. (S. E.) of 267, W. of 471, 472, S. of 506, and S. of S. of 506, were among others allotted to Mr. Young; and Squares 270, 300, 503, and 504 were allotted to the public; the account of the divisions is according to the superficial area of the squares divided, as well those having a boundary on Water Street as those which did not (Rec., Vol. 6, p. 149).

A certificate by the Commissioners as to this division was issued by them October 18, 1794, which was recorded at the request of Mr. Young on the same day in Liber B, at folio 109, of the Land Records of the District of Columbia, agreeably to the Maryland Act of December 19, 1793 (Rec., Vol. 4, p. 2032).

On August 9, 1796, the Commissioners notify Mr. Young (Main Brief, p. 298) that it will be necessary that his improvements be indicated on the face of a plat, and that they had given Mr. Ralston, one of their surveyors, directions to have this done; and their minutes of December 3,

1796, show that they agreed to let Mr. Young have, under the terms of the deed in trust, and on account of his improvements, the Squares 329, 355, 356, 390, 391, and south of 415, all of which had been returned by the surveyors with a boundary on Water street. A certificate of this allotment was recorded in said Liber B, at folio 463, of said land records, on March 18, 1797 (Rec., Vol. 4, p. 1991).

A plat of the squares in which Mr. Young's improvements lay was returned by the surveyor (Rec., Vol. 6, between pp. 398–9), which gives "Water Street" as their boundary. Mr. Young was charged on this allotment with one-half of the superficial area of the squares at the rate of £12, 10s. per acre, according to the terms of the deed in trust. By these proceedings a partition was made between Young and the Commissioners of every square laid off in his land which had Water Street as a boundary.

The Commissioners issued a certificate of sale to James Greenleaf dated October 18, 1794, for the squares which fell to the public on such partition. This certificate was recorded on October 18, 1794, in Liber B, at folio 108, of the District Land Records. (Rec., Vol. 4, p. 2033.)

It is apparent, we respectfully submit, that by these partitions and sales the rights of the parties in interest under the deed in trust, and of the public generally, became fixed and determined, and that "Water Street" became impressed upon the situation to such an extent that nothing short of an act of Congress could destroy the public right to make it a thoroughfare, in fact, at any time. The rights thus created were neither added to nor detracted from, by the Dermott Plan which appeared subsequently in 1797; they would have remained the same had that plan never appeared.

The same remarks are equally applicable to the "appropriations" of land made for public uses. The selections were made prior to the appearance of that plan and would have been equally valid, and the public title equally se-

cure, if the Dermott Plan had never appeared. That plan is, no doubt, useful as evidence of the location and extent of the land selected and of the new squares laid out on the "vacant spaces" shown on the Engraved Plan. But the Dermott Plan was not the only evidence of the existence of such new squares and of such appropriations and of the facts in regard to them which existed before its appearance; they could be readily established otherwise from the records.

On October 5, 1794, Surveyor Freeman states in a communication to the Commissioners (Rec., Vol. 4, p. 1596), that parts of the appropriations for the President's Square, the Judiciary, etc., fall within Mr. Burn's land; on July 14, 1795 (Rec., Vol. 4, p. 1601), the Commissioners direct Mr. Freeman "to designate on a plan of the city delivered for that purpose to him," among other things, "the area of all public appropriations;" and, on November 30, 1796, when a formal declaration by the President in regard to the appropriations was under consideration, and before the appearance of the Dermott Plan, the Commissioners say, in a communication to the President (Rec., Vol. 4, p. 1602):

> "We presume the plan of the city will enable you to point out the appropriations with sufficient accuracy for the purpose of making such declaration;"

they had previously and on July 24, 1795 (Rec., Vol. 4, p. 1601), stated in a letter to him:

> "We think that the public appropriations have in general been made with judgment and taste, and it would not be prudent either to alter or break in upon them."

From the foregoing it is apparent that there is not a street, square or appropriation in the city which can not be proved without the aid of the Dermott Plan. For certain purposes it is useful, but in no matter is it essential or conclusive. Nothing appears upon its face which can not be otherwise proved, and many things which do not appear

upon it, are established by the Commissioners' records as forming part of the city, at the time of its appearance, or as having since been made part of it.

The Commissioners' minutes of June 15, 1795 (Rec., Vol. 4, p. 1599) contain this entry:

> "Mr. Dermott directed to prepare a plat of the city with every public appropriation plainly and distinctly delineated together with the appropriation *now made* by the Board for the National University and Mint."

In this order of the Commissioners the plan of Mr. Dermott had its origin, and the order shows that the "appropriations" had been determined upon before a step had been taken in its actual preparation.

Certainly, there is nothing upon the face of this order indicative of an intention upon the part of the Commissioners to suppress the Engraved Plan, even if it had been in their power to do so, which we respectfully submit it was not. The citations from the letters of the President and of the Commissioners, which have been given, are all of a character to the contrary.

It will be observed that in the "instrument" signed by President Washington on March 2, 1797, the trustees are not called upon to convey the appropriations shown on the annexed plan, but only the streets delineated thereon; the "instrument" specifically describes the appropriations which were to be conveyed; they are not determined by the plan but by the description.

Mr. Dermott himself said, in 1799, in his answer to Question 2 (Rec., Vol. 6, p. 212), that his plan—

> "was made from official documents returned from the surveyors in the field, agreeably to regulations made by the Commissioners at April meeting, 1793."

The "official documents" referred to by him were, in so far as the squares were concerned, the returns of the sur-

veyors, and they show a "Water street" as one of the boundaries of the squares in Mr. Young's land. It is obvious, therefore, that in preparing his map he did not intend to suppress Water street, which he could not have done without suppressing the returns of the surveyors, which he says he followed. An effective suppression of Water street on this map would have involved an extension of the lines of the squares to the river, which would have, in many instances, considerably enlarged them and rendered necessary a readjustment of the partitions, and this would have been impracticable owing to the sales made to private persons. It is evident that even on the Dermott Plan Water street remained as "adjusted and bounded" July 12, 1794. In laying out the squares upon his map, according to the surveyor's returns, Mr. Dermot made "Water street" a part of his plan as effectively as if he had specifically entered its name thereon; that he recognized the power of the public authorities to lay out a water street, in accordance with the principle established by the Engraved Plan, is proved by the fact that he introduces and fully outlines upon his map such a street as the southern boundary of Squares 63 and 89, although said squares had been returned by the surveyors with the Potomac River as a boundary.

The corporate authorities of the City of Washington, under the powers conferred upon them by their charter, have always exercised jurisdiction over Water street and wharves in the city.

Mr. Forsyth, the surveyor of the District of Columbia, and for many years the surveyor of the city corporation, testified, in the Steamboat Cases, in 109 U. S. (Rec., Vol. 4, p. 1341), that Water street, as at present laid out, was filled up by various owners along the river, by the late city corporation, and by the late Board of Public Works of the District; that in 1851, when he first saw the street (p. 1340), it extended from the Long Bridge to Eleventh or Tenth

street; that (p. 1347) there was then a sea wall from the bridge to Tenth street, and that "the balance of the sea wall along the whole line, that has been built under my own direction as surveyor of the city;" and that the sea wall was made as a southwestern boundary for Water street; and he believed the whole of the sea wall had been built and the street filled up to it by the city.

This deposition and others from the Steamboat Cases were given in evidence under a stipulation.

The filling up of the street in part is provided for by an Act of the Councils of June 8, 1826 (Rec., Vol. 7, p. 231). in 1835 William Elliott, the City Surveyor, refers to the street in a report to the city authorities, in which he states that "no water privilege" was sold with the squares bounded by it (109 U. S. 695); and the Corporation, by an act passed February 22, 1839, adopted the plan No. 2 submitted by him in regard to the street and the manner of wharfing therefrom. (Ib. 697.)

See also the Resolution of May 31, 1839 (Rec., Vol. 7, p. 2336); the Act March 8, 1850 (Ib. 2337); the Act of September 13, 1860 (Ib. 2342–3); and the Act of March 23, 1863, authorizing the Mayor to lease wharf sites "in front of any sea wall heretofore built by this Corporation" (Ib. p. 2344); the Joint Resolution of April 9, 1870, directing the Mayor to notify all persons occupying wharves, between Fourteenth Street and the Arsenal Grounds, who do not pay rent to the Corporation, to vacate such wharves, etc. (Ib. p. 2344.)

The plan of Mr. Dermott was not even, when it appeared, a complete illustration of the city as it then existed; in the description of Reservation 1 (the President Park) given in the instrument signed by the President March 2, 1797, one of the boundaries mentioned is Canal street extending from Fifteenth to Seventeenth street, and this street is not shown upon that plan; the location and dimensions of Square 22,

which had been surveyed and divided prior to its appearance, are not correctly delineated upon it; nor is square south of Square 173, which had been surveyed and divided prior to the appearance of that plan, delineated upon it.

President Jefferson, in a letter dated July 14, 1804, in speaking of it says: "The plan and declaration of 1797 were final so far as they went, but even they left many parts unfinished, some of which remain still to be declared"; by which he meant that that plan was "final" in so far as it represented the laying out of the city in accordance with the design of the Engraved Plan, and that the "many parts" left unfinished were things which still remained to be done in the consummation of that design.

The Dermott Plan is certainly not a complete illustration of the city at the present time, for since its appearance Water street in Notley Young's land has been reclaimed from the river and made an actual thoroughfare in accordance with the design of the Engraved Plan; and Captain Stewart testifies (Rec., Vol. 4, p. 1563), that squares were laid out in the city and divided with the proprietors after the appearance of the Dermott Plan which do not appear upon it or upon the Engraved Plan; among these may be mentioned Square south of 1015 (Rec., Vol. 4, p. 1614), which was laid out where an open or vacant space appears on the Dermott Plan; Square north of 1017 (Ib., 1615), was laid out where an open or vacant space appears on it; Squares east of 1042 and south of 1062 (Ib., 1615), are also instances. They were laid out under orders from the Commissioners (Rec., Vol. 4, p. 1631).

The validity of such squares is in no manner affected by the fact that they do not appear upon the Dermott Plan, and they are no less a part of the city, because they do not so appear. All the squares added to the city since the Dermott Plan appeared, as well those then existent, appear on the King Plan of 1803.

Mr. Freeman, the surveyor of the city, says, in a report to the Commissioners under date of July 4, 1795 (Rec., Vol. 4, p. 1599):

> "I have fixed at Rock Creek on the road leading from Georgetown to Bladensburg, where a small temporary boundary stone stood, a large stone lettered, '*First Boundary of the City of Washington*,' and from thence run a street 80 feet wide, which bounds the city. . . . The north side of the bound stones stand in the north line of the street—so that these stones stand in the city;"

and in conclusion he made the following recommendations:

> "In order strongly to mark *the principal features of the plan*, some of the most useful and convenient streets should be opened and cleared, so as to give an easy communication to all parts of the city. Such streets as are most proper to be opened can readily be determined upon."

In the surveyor's returns all the squares along the street referred to have for one of their boundaries "the street which bounds the city"; although laid out and bounded as one of the streets of the city long prior to the Dermott Plan, Boundary street, now known as Florida avenue, is not shown or indicated on that plan any more than Water street along the Potomac is shown or indicated upon it. The argument of the appellants against the existence of Water street as one of the streets called for by the plan of the city, and the fee simple of which was therefore in the United States, is equally applicable to Boundary street; both are shown on the Engraved Plan, and if one is to be suppressed for any purpose, affecting the public right, because not mentioned by name on the Dermott Plan, the other must be treated in like manner.

No President has ever declared that any act of his in connection with the Dermott Plan was intended to give it "the final and regulating stamp"; and neither the first Commis-

sioners, nor their successors in authority over the affairs of the city, have ever declared that since the appearance of that plan it has been "the general rule" in their transactions. Mr. Forsyth, the Surveyor of the District, however, does testify that in his experience as a surveyor in the employment of the Commissioner of Public Buildings, upon whom had devolved the duties and authorities of the early Commissioners, and in the service of the late corporation of the city of Washington and its successor, the District of Columbia, and which experience had extended over a period of upwards of forty years, the King Map of 1803 had been regarded as the "standard map" of the city, and had been followed and acted upon as such in matters of public improvements. He also testified that he had been informed, by those who had been in the same service for many years prior to his connection with it, that said plan had also been so regarded and acted upon. (Rec., Vol. 3, p. 933.)

We submit that the reasonable and true view to take of the offices of the several plans of the city known as the Ellicott or Engraved Plan of 1792, the Dermott Plan of 1797, and the King Plan of 1803, is that the Engraved Plan constitutes a representation of something to be done according to a certain scheme and design indicated upon its face; that the Dermott Plan is a map which illustrates its accomplishment in part; and that the King Plan is a map which illustrates its further accomplishment in part; and that when Congress shall have provided for the completion of a water street along the Eastern Branch, within the city, the original scheme and design of the plan of the city in respect of that street will be consummated.

In the Steamboat Cases, in 109 U. S. (bottom of page 679), it is said of the space for a water street indicated on the plan of the city south of the line of the squares facing the river:

> "It is quite certain that such a space was designated on the official map of the city as *originally*

adopted, the division and sale of the squares and lots being made in reference to it. What the legal effect of that fact is we shall hereafter inquire; and while we do not consider it to be qualified by the circumstances set forth as to the actual history of the street as made and used, they perhaps sufficiently account for the doubt and confusion in which the questions of right brought to issue in this litigation seem for so long a period to have been involved.

"The transaction between Notley Young and the public authorities, as evidenced by the documents and circumstances thus far set forth, was equivalent in its result to a conveyance by him to the United States in fee simple of all his land described, with its appurtenances, and a conveyance back by the United States to him of Square No. 472, and to Greenleaf of Square No. 504, bounded and described as above set forth, leaving in the United States an estate in fee simple, absolute for all purposes, in the strip of land, designated as Water street, intervening between the line of the squares as laid out and the Potomac River."

And again (p. 684):

"Notley Young, and the successor to his title, had no property in the street, not even the right to insist that it should be maintained as such. The United States held its title to the land over which it was laid out, for its own use, and not in trust for any person or for any other purpose. . . .

"And it is immaterial that the ground laid out as a street was not in a condition to be used as a street, or that much labor was required to place it in that situation, or that, in fact, it had not been used as such for a long period of time."

In speaking of the disputes which arose, some quite early,

"not so much as to what rights belonged to 'water lots,' nor as to what properly constituted a 'water lot,' but in regard to particular localities, whether that character attached to individual squares and lots,"—

it is said in the opinion (top of page 693):

> "It is also true, we think, that mistakes arose, as perhaps in the very case of the lots on the north side of Water street, owing to the fact that the street existed only on paper, and for a long time remained an unexecuted project; property appearing to be riparian, because lying on the water's edge, which, when the street was actually made, had lost its river front. They were thought to be 'water lots,' because appearing to be so in fact, but were not so in law, because they were bounded by the street and not by the river."

Even if the grant from Young had been simply of land for a street bordering on the river, and the dedication had been for that purpose, the riparian right would have passed to the public (Ib., pp. 683–4).

The decision in the Steamboat Cases furnishes a complete answer to every point made by the appellants in Classes 4 and 6.

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In conclusion, the attention of the court is called to the fact that certain of the heirs of Notley Young, (the only parties in interest under the deed in trust if the appellants' contention as to the non-existence of Water street were correct,) appeared and answered the bill of complaint. In their answers they set forth the conveyances to Beall and Gantt in trust by said Notley Young of his tract on the Potomac, and the provisions of said instrument in regard to the partitions to be made with him of the land conveyed. They further set forth the partitions between him and the public made October 18, 1794, and December 3, 1796; and in paragraphs 9 and 10 of their answers (Rec., Vol. 1, pp. 113, 120) they aver that "Water street was laid out prior to the divisions and allotments hereinbefore mentioned, . . . and was of the width of eighty feet, and no more; and that there

was and is between the south line of said Water street and the water line of the said Potomac River a strip of land which was not embraced in said street," etc., which said strip of land and the appurtenances thereto "have never been divided between the said Notley Young and the United States."

The respondents made no effort to prove the existence of the alleged strip of land, and abandoned their claim.

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